



DONALD L. WOLFE, Director

COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

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ADDRESS ALL CORRESPONDENCE TO:
P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

December 8, 2005

IN REPLY PLEASE
REFER TO FILE: PD-1

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

**EAST 74TH STREET BRIDGE OVER THE ALAMEDA CORRIDOR
PORTS OF LONG BEACH AND LOS ANGELES AND THE ALAMEDA CORRIDOR
TRANSPORTATION AUTHORITY-COUNTY COOPERATIVE AGREEMENT
SUPERVISORIAL DISTRICT 1
3 VOTES**

IT IS RECOMMENDED THAT YOUR BOARD:

Authorize the Director of Public Works, or his designee, to negotiate and execute a cooperative Agreement with the Ports of Long Beach and Los Angeles and the Alameda Corridor Transportation Authority, substantially in the same form as the enclosed Agreement, for a project to construct a new bridge at East 74th Street over the Alameda Corridor which is located in the unincorporated Florence area. The Agreement provides for the County to perform the preliminary engineering and administer the construction of the project at County expense. The Agreement also provides for the Ports of Long Beach and Los Angeles and the Alameda Corridor Transportation Authority to grant the necessary easements to the County for the construction of the project and to provide engineering services and construction inspection at an estimated cost of \$100,000. The total project cost is currently estimated to be approximately \$3,000,000. Funding for this project is included in the Fiscal Year 2005-06 Road Fund Budget.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The County is proposing to construct a new bridge at East 74th Street over the Alameda Corridor to provide vehicular and pedestrian access to the Florence and Alameda Commercial Center. The Alameda Corridor is owned by the Ports of Long Beach and Los Angeles and is operated by the Alameda Corridor Transportation Authority. Your Board's approval is necessary for the delegation of responsibilities and the cooperative financing of the project.

Implementation of Strategic Plan Goals

This action meets the County Strategic Plan Goal of Service Excellence. The proposed project in conjunction with the Florence and Alameda Commercial Center will improve the quality of life of the residents of the unincorporated Florence area.

FISCAL IMPACT/FINANCING

The total project cost is estimated to be \$3,000,000. Funding for this project is included in the Fiscal Year 2005-06 Road Fund Budget.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The proposed Agreement provides for the County to perform the preliminary engineering and administer the construction of the project. The Agreement further provides for the Ports of Long Beach and Los Angeles and the Alameda Corridor Transportation Authority to grant the necessary easements to the County for the construction, operation and maintenance of the bridge, and to provide engineering services during the design phase and inspection services during the construction phase.

Prior to execution by the Director of Public Works, or his designee, the Agreement will be approved as to form by County Counsel.

The Honorable Board of Supervisors
December 8, 2005
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ENVIRONMENTAL DOCUMENTATION

The California Environmental Quality Act requires public agency decision makers to document and consider the environmental implications of their actions. On July 5, 2005, your Board certified the Final Environmental Impact Report, adopted Findings of Fact and the Statement of Overriding Considerations, and adopted the Mitigation and Monitoring Plan for the Florence and Alameda Commercial Center, which included the construction of this new bridge at East 74th Street over the Alameda Corridor.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

The proposed project is needed and of general County interest.

CONCLUSION

Upon approval, please return three adopted copies of this letter to Public Works.

Respectfully submitted,

DONALD L. WOLFE
Director of Public Works

MER:abc

C060615

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Enc.

cc: Chief Administrative Office
County Counsel

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

Alameda Corridor Transportation Authority
One Civic Plaza, Suite 350
Carson, CA 90745
Attention: Janine Garrison

SPACE ABOVE THIS LINE FOR RECORDER'S USE

This instrument is exempt from Recording Fees (Govt. Code § 27383)
and from Documentary Transfer Tax (Rev. & Tax. Code § 11922)

EASEMENT DEED AND AGREEMENT

(74th Street Bridge)

This Easement Deed and Agreement ("Deed") is dated _____, 2005, among the Alameda Corridor Transportation Authority, a joint powers authority created under the laws of the State of California ("ACTA"), the City of Los Angeles acting by and through its Board of Harbor Commissioners, a municipal corporation ("POLA"), the City of Long Beach acting by and through its Board of Harbor Commissioners, a municipal corporation ("POLB"), and the County of Los Angeles, a political subdivision of the State of California ("COUNTY") and is with reference to the following:

RECITALS:

A. COUNTY is undertaking the development of the La Alameda Retail Development, in the unincorporated territory of the COUNTY southeast of the intersection of Alameda Street and Florence Avenue;

B. ACTA constructed and oversees a high speed freight railroad corridor (the "Alameda Corridor") between the Ports of Los Angeles and Long Beach and the continental rail network near downtown Los Angeles, and the Alameda Corridor is in a below grade trench in the vicinity of COUNTY's La Alameda Retail Development. A vehicular bridge over and across the Alameda Corridor would facilitate vehicular traffic to COUNTY's La Alameda Retail Development;

C. ACTA is a joint powers authority created by the City of Los Angeles and the City of Long Beach pursuant to California Government Code Sections 6500 *et seq.* for the purpose of constructing, operating and maintaining the rail infrastructure project commonly known as the Alameda Corridor in Los Angeles County, California;

D. In furtherance of the construction of the Alameda Corridor, POLA and POLB jointly acquired title to certain real property over, on and under which the rail network has been constructed;

E. Pursuant to that certain Use Permit dated as of October 12, 1998, POLA and POLB authorized ACTA, in its own name, to construct and operate the Alameda Corridor. In furtherance thereof and pursuant to ACTA's joint power authority, ACTA may also acquire, in its own name, title to certain real property over, on and under which the Alameda Corridor has been constructed and additional land in the vicinity of the Alameda Corridor;

F. COUNTY desires to construct such new bridge across the Alameda Corridor at 74th Street to provide access to the La Alameda Retail Development, said new bridge hereinafter referred to as the Project;

G. The Project will be constructed in the area described in Exhibit A attached hereto ("Property"); the Property is depicted on Attachment A-1 attached hereto;

H. COUNTY is willing to perform the planning, detailed engineering, including preparation of plans, specifications, cost estimates, and material testing; advertise a contract for construction bids; award the construction contract, cause the work under the construction contract to be performed and perform construction contract administration, inspection, field engineering, coordination and survey for Project;

I. POLA, POLB and ACTA are desirous of assisting the County in its Project since it will result in improving the community and benefiting the surrounding area.

J. POLA, POLB and ACTA, through their respective Board of Harbor Commissioners, are willing to grant certain easement rights to the COUNTY pursuant to this Deed to construct said Project on and over a portion of the Alameda Corridor and the County

will assume maintenance, repair and replacement responsibilities and have non-exclusive easement rights over designated portions of the Project upon the terms and conditions for such construction, maintenance and ownership of the Project as herein provided;

K. COUNTY is willing to pay all costs and expenses for the planning, design, construction, repair, maintenance and replacement of said Project and to advance funds and otherwise pay to ACTA for all of ACTA's design and construction reviews, construction oversight, railroad flagging protection and annual structural integrity reviews of Project over the Alameda Corridor as provided by this Agreement, it being expressly acknowledged by ACTA and COUNTY that COUNTY is obligated to advance all funds and/or reimburse to ACTA as provided herein; and

L. Exhibit B attached hereto ("Depiction") is a cross-section of the Alameda Corridor reflecting the following; the terms set forth below are hereby defined terms for the purposes of this Deed:

- "Trench Walls"
- "Bridge Abutment and Footings"
- "Roadway Surface"
- "Barrier Wall"
- "Sidewalk"
- "Fence"
- "Bridge Structure"
- "Air Space Above the Surface";

M. Attachment A-1 to Exhibit A attached hereto depicts the "Property";

N. Attachment E-1 to Exhibit E attached hereto depicts the "Form and Concrete Access Areas"; and

O. Exhibit D attached hereto depicts the "Landscape Area."

AGREEMENT

NOW, THEREFORE, in consideration of the mutual benefits to be derived by the parties hereunder and the promises herein contained, it is hereby agreed as follows:

ARTICLE A
EASEMENT DEED TO THE COUNTY

1. Subject to and excepting the matters set forth in Article A, Section 3 below, ACTA, POLA and POLB hereby grant to the COUNTY, to the extent of their respective interests therein, non-exclusive easements (the **"COUNTY Easements"**) for all of the following: (i) over, under and above the Property for the purpose of constructing the Project; (ii) over, under and above the real property described in Exhibit E attached hereto ("Form and Concrete Access Area") for the purposes of access in order to construct the improvements within the Property; (iii) on, over and above those Roadway Surfaces located on the Property and within six (6) inches below such Roadway Surfaces together with any traffic loops located therein for the purpose of maintaining, repairing and replacing such roadway improvements and for the purposes of street and roadway uses; (iv) on, over and above the Bridge Structure on the Property for the purpose of maintaining and repairing the "Barrier Walls," the "Fences," "Traffic Lights," surface and roadway lighting, drainage systems and crash protection system (collectively, the "Surface Improvements"); and (v) over, under and above the "Landscaping Area," as more particularly depicted in Exhibit D attached hereto for planting and maintaining landscaping improvements. The easements set forth in Article A, Section 1 (i) and Article A, Section 1 (ii) are temporary in nature and shall automatically terminate and be extinguished at the time the Project has been completed and all construction-related materials not integral to the final as-completed Project shall have been removed by the COUNTY. The COUNTY will use its best efforts to exercise its rights under this Deed in a manner that minimizes interference with ACTA's operations.

2. The grants provided for in this Article A, Section 1 are accepted concurrently with recording of this Deed and by the COUNTY executing and recording the Certificate of Acceptance attached hereto.

3. The following rights and interests shall be excepted or reserved by ACTA, POLA and POLB from the grant provided for in Article A, Section 1 herein:

(a) The portion of the Property below the Bridge Structure subject to railroad improvements or utilized for railway traffic and all rights in and to the Property not specifically granted by this Deed;

(b) The right of vehicular and pedestrian ingress and egress through the COUNTY Easement areas for the purposes of accessing, inspecting, maintaining, repairing, replacing, constructing or improving any portion of the Alameda Corridor or any rail corridor-related facilities;

(c) The right of entry on, under and through the COUNTY Easements to excavate portions of the COUNTY Easement areas in order to repair, reconstruct or improve portions of the Alameda Corridor, equipment or fixtures located therein or any rail corridor-related facilities; and

(d) The right of entry on, under and through any COUNTY Easements for the purpose of repairing or replacing any Bridge Structure improvements.

ARTICLE B

COUNTY AGREEMENT

COUNTY, at its sole cost and expense, agrees:

1. To perform the complete detailed engineering for Project, including preparation of plans, specifications, cost estimates, coordination, and material testing. Said design shall comply with the existing ACTA Design Criteria as attached in Exhibit C and incorporated into this Agreement, including but not limited to the integrity of the combined structural systems under the postulated "one strut removal" condition facilitated by the transverse shear transfer at the trench wall cap beam expansion joints. The Project shall not impose any additional loads or displacements onto the existing Alameda Corridor trench structure, and the structural integrity of the existing trench walls shall be maintained at all times during construction operations. A temporary service platform shall be installed between the bridge construction activities and the operating rail system to preclude any objects falling onto the tracks or moving trains. Minimum rail clearances as determined or directed and approved in writing by ACTA for safe railroad operations shall be maintained below or adjacent to temporary shoring or falsework.

2. To obtain ACTA's written approval of final plans and specifications for Project ("Final Plans & Specs") prior to the start of any construction within the ACTA right of way. In the event that ACTA requests any deviations, revisions, changes or other alterations of any such Final Plans & Specs, COUNTY shall so conform to and comply with ACTA's request at COUNTY's sole cost and expense. Such plans shall include but not be limited to the following: sequencing of the work, including staging of construction work, equipment locations, temporary support shoring or temporary bracing plans, locations where work is to be performed impacting railroad traffic, and utilities, details, locations and types of protective covering to be used, measures to assure that people, properties, utilities and improvements will not be endangered, arrangements to assure the appropriate level of security during the course of construction, and detail and measures for preventing material, equipment and debris from falling into the trench. COUNTY understands and acknowledges that ACTA may solicit comments, input and information from the railroads using the Alameda Corridor in connection with ACTA's review and approval of any matter under this Deed.

3. To restore the ACTA right of way at completion of Project to conditions pre-existing prior to implementation of the Project, including but not limited to landscaping and landscaping irrigation.

4. To obtain any and all required regulatory and construction permits for Project from agencies having jurisdiction over said Project, including but not limited to any required environmental reviews, CPUC permit, authorizations and any other permits.

5. To pursue any and all community support for Project, as deemed necessary or desirable by COUNTY.

6. To issue notices to public utility organizations and owners of overhead, surface and subsurface utility facilities when the relocation or removal of said overhead, surface or subsurface facility is needed due to interference with Project, and to incur any and all costs and expenses regarding any such utility relocation.

7. To timely pay for all costs and expenses of the Project, including without limitation, the advancement or payment of funds to ACTA as provided in Article B, for expenses

incurred in the review and approval of design plans and specifications, coordination, meetings, construction oversight, railroad flagging protection and legal fees in preparation and review of legal documents.

8. To advertise a contract for construction bids; award the construction contract after written approval by ACTA of the contract, and perform construction contract, administration, inspection, field engineering and survey for Project. Any such contract shall provide that ACTA, POLA, POLB and the railroads using the Alameda Corridor are third party beneficiaries and are specifically covered by the indemnification and insurance provisions of any such contract.

9. To make changes to the Final Plans & Specs for Project necessitated by unforeseen or unforeseeable field conditions encountered during construction at no cost to ACTA, only after obtaining ACTA's prior written approval of any such changes.

10. To provide ACTA with a complete set of as-built plans for Project within thirty (30) days following completion of construction of Project.

11. To accept ownership, and thereafter be responsible for the operation, maintenance, repair and replacement of the roadway wear surface, sidewalks, crash protection devices, barrier rails, fencing, traffic lights, traffic loops, lighting, signs, surface and roadway drainage systems, and appurtenant utilities, all of which shall constitute Surface Improvements.

12. To construct the Project in accordance with the Final Plans & Specs.

13. To complete the Project on or before _____ months from the date this Deed is recorded in the Official Records of the County of Los Angeles subject to extension upon the written concurrence of the COUNTY and ACTA.

14. To require any and all of COUNTY's construction, maintenance or other contractors to provide and keep in effect at all times the following insurance with minimum limits as indicated below, and issued by insurers with A.M. Best's ratings no less than A-: VI:

(a) Commercial general liability insurance equivalent to standard Insurance Services Office (ISO) form CG 00 01 with no exclusions for explosion, collapse or underground risks and providing coverage for completed operations. Policies shall provide coverage for, or

shall be endorsed to eliminate any exclusions applicable to, liability assumed in contracts with railroads or for losses arising out of work within 50 feet of a railroad (e.g., ISO endorsement CG 24 17).

(b) Business auto coverage equivalent to standard Insurance Services Office form CA 00 01 covering owned, nonowned and hired autos.

(c) Workers' compensation (statutory) and employer's liability insurance.

(d) Railroad protective liability insurance in form and amounts required by the railroads and including ACTA as a named insured.

The minimum limit for all liability coverages is \$1,000,000 with a \$2,000,000 aggregate limit for general liability. In addition, prime contractors shall provide total general liability limits through any arrangement of excess or umbrella insurance to a minimum of \$10,000,000 aggregate. Excess or umbrella insurance must include as insureds those parties included as insureds in the primary policies. Coverage shall be "follow form."

At all times during the term of this Agreement, COUNTY shall ensure that prime contractors provide to and maintain on file with ACTA evidence of insurance consisting of a certificate of insurance evidencing the required coverages and limits, and an additional insured endorsement adding ACTA, POLA, POLB and the railroads using the Alameda Corridor, its agents, officers, and employees, to the contractor's general liability policy. COUNTY's contracts shall specify that any actual or alleged failure on the part of ACTA or any other additional insured under these requirements to obtain proof of insurance required under this Agreement with the COUNTY in no way waives any right or remedy of ACTA or any additional insured, in this or any other regard.

Additional insured status shall include coverage for completed operations.

Coverage for the additional insureds shall apply to the fullest extent permitted by law excepting only the active negligence of the additional insureds as established by agreement between the parties or by the findings of a court of competent jurisdiction.

COUNTY shall require any and all prime contractors to include in their contracts with subcontractors, these requirements. Prime contractors shall be required to obtain and maintain copies of evidence of insurance complying with these requirements from subcontractors.

15. To indemnify, defend, and save harmless ACTA, POLA, POLB and the railroads operating within the Alameda Corridor, their agents, officers, and employees from and against any and all liability, costs, damages, claims and expenses (i) arising from negligence or willful misconduct on the part of COUNTY, its officers, employees, agents, contractors, or subconsultants of any tier in conjunction with Project; (ii) arising from or connected with the construction, completion, repair, maintenance, replacement or existence of the Project or any portion thereof; (iii) arising from the use of the Surface Improvements, the Surface Improvements or any matter occurring within or relating to the Air Space Above the Surface; or (iv) arising from a breach of this Deed by the COUNTY, including reasonable defense costs, legal fees, claims, actions, and causes of action for damages of any nature whatsoever. Notwithstanding the forgoing, COUNTY need not indemnify or hold ACTA, POLA, POLB or the railroads harmless to the extent of such entity's active negligence or willful misconduct as determined by a court of competent jurisdiction or by agreement between the parties. COUNTY shall require that a written indemnification in favor of ACTA, POLA, POLB and the railroads from any and all of COUNTY's contractors and subcontractors working on Project arising from the negligence or willful misconduct on the part of any such contractor or subcontractor, its officers, employees, agents or subconsultants or subcontractors of any tier in conjunction with the Project.

16. To comply with all ACTA, Railroad, Federal Railroad Administration, California Public Utility Commission and other regulatory agency requirements for work activities overhead or adjacent to Alameda Corridor railroad tracks. ACTA will be the ultimate authority as to whether railroad flagging protection is required during any specific work activity, and COUNTY shall advance and/or pay to ACTA all costs associated with compliance with such requirements as provided in this Article B.

17. To make application for and pay fees associated with any and all operating permits and permanent utility service connections required for operation of the Project or La Alameda Retail Development, including permanent electrical, telephone, water, sanitary sewer, and natural gas hook-ups, and for any National Pollutant Discharge Elimination System permit or other environmental permits required for the Project or La Alameda Retail Development.

18. To deposit with ACTA concurrent with execution hereof, the amount of \$60,000, which figure represents COUNTY's initial deposit of the estimated costs that have been or will be incurred for review of progress submittals to date, and for other required activities by ACTA during the first two months of Project. Such deposit shall in no way limit COUNTY's obligations under Article B to pay or reimburse ACTA for any costs and expenses.

19. To advance funds to ACTA without any deduction or offset whatsoever, no later than thirty (30) days following receipt of an itemized billing estimate from ACTA of the costs and expenses ACTA estimates it will incur regarding the Project, and to continue making such advance payments as invoiced by ACTA on a monthly basis until completion of Project. After completion of the Project, COUNTY shall continue to advance funds to ACTA for any and all estimated costs or expenses ACTA will incur for maintenance or inspection activities of ACTA as provided by this Agreement. All such invoices shall be submitted by ACTA pursuant to Article C, Section 5. It is the express covenant and agreement of COUNTY that it will advance all such amounts as invoiced by ACTA without deduction or offset, and that upon any failure to so advance such amounts to ACTA within said thirty (30) days from the COUNTY's receipt of such invoice, that ACTA has the right to suspend any further work within the ACTA right of way.

20. To pay to ACTA without any deduction or offset whatsoever, no later than thirty (30) days following receipt of an itemized billing of costs or expenses actually incurred by ACTA of the costs and expenses ACTA actually incurred in excess of any payments received by ACTA from the COUNTY based on billing estimates. It is the express covenant and agreement of COUNTY that it will pay all such amounts as invoiced by ACTA without deduction or offset, and that upon failure to do so pay such amounts to ACTA within said thirty (30) days from the

COUNTY's receipt of such invoice, that ACTA has the right to suspend any further work within the ACTA right of way.

21. To perform all required maintenance, repair or replacement to the bridge abutments, footings, girders or understructure to the extent ACTA has not notified the COUNTY, in writing pursuant to Article C, Section 9, of its election to perform any specific task set forth in this Article B, Section 21.

22. To restore the Property to its original pre-Project condition or at the sole and absolute discretion of ACTA, to such condition as ACTA shall determine to permit the safe use and operation of the Corridor, in the event COUNTY no longer is funding the Project or decides not to complete the Project or is otherwise interrupted in the completion of the Project for an unreasonably prolonged period of time as determined in the sole discretion of ACTA.

23. COUNTY agrees and acknowledges that ACTA shall have no liability whatsoever regarding any inspection, approval or design review given or not given under this Deed.

24. That ACTA in an emergency situation may act to handle such emergency situation without prior consultation with the COUNTY.

25. That all obligations and responsibilities of COUNTY under this Deed shall be at COUNTY's sole cost and expense.

26. That at all times, the COUNTY shall own the improvements constituting the Project and shall be responsible for the maintenance, repair and replacement of such improvements.

27. After completion of the Project, to notify ACTA at least thirty (30) days prior to undertaking any work covered in Article B, Section 21.

ARTICLE C
ACTA AGREEMENT

ACTA agrees:

1. To review all plans and specifications for Project that the COUNTY is required to submit to ACTA pursuant to the terms of this agreement. To review construction submittals, work plans, and shop drawings. All such reviews by ACTA shall be completed by ACTA within thirty (30) days from the submittal by COUNTY. Should ACTA request COUNTY's revision, change or other alteration of any plans or specifications, COUNTY shall so comply as provided in Article B, Section 2.

2. To provide railroad flagging protection at COUNTY expense as ACTA deems necessary or desirable.

3. To relocate prior to COUNTY's contractor's Notice to Proceed, existing 4" fiber optic conduit and cables to a location so as not to interfere with temporary nor permanent construction work. Estimated cost to be advanced by COUNTY prior to commencement of work.

4. To prepare and submit to COUNTY itemized monthly invoices for estimated expenditures for review of design activities, oversight of construction activities and railroad flagging protection requirements one month in advance, as progress on Project proceeds and until Project completion. After completion, ACTA will from time to time invoice COUNTY for all estimated costs and expenses regarding any ACTA maintenance, repair or inspection activities under this Agreement.

5. To provide COUNTY with quarterly reports of actual expenditures compared to ACTA's invoiced estimates submitted to COUNTY. ACTA will monitor the actual versus the planned expenditures monthly for the purpose of tracking whether COUNTY's payments will be sufficient.

6. Within thirty (30) days from COUNTY's completion of Project and all work incidental thereto and at any time thereafter for any work done by ACTA for which it is entitled

to be paid for by the COUNTY pursuant to Article B above after completion of the Project, ACTA will furnish COUNTY with a detailed statement of all amounts advanced by COUNTY pursuant to Article B. If there remains any excess of advanced funds after all ACTA costs and expenses have been satisfied, then ACTA thereafter shall refund to COUNTY (without interest) promptly after completion of ACTA's accounting any amount of COUNTY's advancements remaining. If there is a deficit between ACTA costs and expenses and the amount of the advances ACTA will bill COUNTY for any additional amount required to complete COUNTY's financial obligations pursuant to this Agreement and COUNTY as provided in Article B shall pay within thirty (30) days after receipt of such accounting the remaining funds due to ACTA.

7. To require any contractors working on Project under ACTA's direction and control, to agree to indemnify, defend and save harmless COUNTY, its agents, officers, and employees from and against any and all liability and expenses arising out of that contractor's work performed on Project due to the negligence or willful misconduct of the contractor or of its officers, employees, agents, or subcontractors of any tier, except to the extent of COUNTY's negligence or willful misconduct as determined by a court of competent jurisdiction or by agreement between the parties.

8. To perform periodic bridge structural integrity reviews for the bridge abutments, footings, girders and understructure.

9. At COUNTY's sole cost and expense, ACTA may, but is not obligated, to perform maintenance, repair or replacement work regarding the bridge, abutments, footings, girders or understructure and to maintain and repair the Project and to make any necessary replacement of any component of the Project requiring replacement; to the extent ACTA desires to undertake any such work, ACTA shall notify the COUNTY in writing, from time to time, identifying the tasks it will be performing.

ARTICLE D
MUTUAL COVENANTS

It is mutually understood and agreed by COUNTY and ACTA as follows:

1. COUNTY understands that ACTA may not proceed with any of its responsibilities or duties under this Deed unless funds have been advanced or paid by COUNTY pursuant to this Deed to cover each specific responsibility or duty.

2. Railroad traffic and operations occur continuously throughout the day and night on the ACTA tracks within the Alameda Corridor trench. Railroad operations shall take precedence and shall be maintained at all times, subject to extremely limited work windows during which time railroad operations on one or more tracks may be restricted. Any work activities, which could directly affect railroad operations must be performed within an approved, limited duration work windows at which time railroad operations will be temporarily restricted. However, it is mutually understood that opportunities for absolute work windows for specified, restricted time duration are extremely limited. Application by the COUNTY for work windows will be made to ACTA. All times, durations or other requirements regarding such work windows shall be reasonably considered subject to railroad operating requirements. Notwithstanding the foregoing, ACTA will act in good faith in attempting to accommodate COUNTY's schedule and to attempt to reduce any liquidated damages paid to COUNTY's contractor. During approved absolute work window(s) bridge construction activities will be given priority over railroad operations. However, ACTA may terminate, modify or otherwise impose restrictions on any ACTA approved work windows, and COUNTY so acknowledges ACTA's sole discretion in this regard, and releases and holds ACTA free and harmless regarding any such costs or expenses resulting from, or otherwise attributable to any ACTA termination or limitation of such work windows, or to any delays in completion of the Project attributable thereto. COUNTY acknowledges and agrees that ACTA's ability to impact railroad operations may be subject to agreements with railroads operating within the Alameda Corridor and those rights on use of the Alameda Corridor which are superior to any rights or obligations set forth in this Deed.

3. During construction of Project, COUNTY shall furnish an inspector or other representatives to perform the function of an inspector. ACTA may also furnish a representative to provide oversight of the construction activities of Project. Said representatives shall cooperate and consult with each other. ACTA representative shall not issue any directive(s) to any contractor, but shall work through the COUNTY representative. The orders of the COUNTY inspector to the contractor or any other COUNTY representative in charge of construction shall prevail and be final, except with respect to contractor activities affecting railroad operations where the authority of the ACTA representative and/or railroad flagger shall be absolute. ACTA will invoice COUNTY for the direct costs of ACTA's oversight representative.

4. If at any time COUNTY determines in its sole discretion that a material change has impacted Project, including but not limited to soil conditions, additional regulatory or permit requirements, or site requirements, and that said material change has rendered Project unfeasible, then in such event COUNTY and ACTA shall meet and confer in good faith to resolve the material change that renders Project unfeasible. If construction activities have commenced and the Project is still deemed to be unfeasible, then in addition to any other obligation under this Deed, COUNTY shall be obligated at COUNTY's sole cost and expense to remove any newly constructed facilities from the Alameda Corridor right-of-way and restore the Alameda Corridor trench structure to its original condition. In this event COUNTY remains obligated for all of ACTA's costs and expenses as provided in Article B.

5. This Deed shall only be modified by the mutual written consent of all the parties.

6. In contemplation of the provisions of Section 895.2 of the Government Code of the State of California imposing certain tort liability jointly upon public entities solely by reason of such entities being parties to an AGREEMENT (as defined in Section 895 of said Code), each of the parties hereto, pursuant to the authorization contained in Sections 895.4 and 895.6 of said Code, will assume the full liability imposed upon it or any of its officers, agents, or employees by law for injury caused by any act or omission occurring in the performance of this AGREEMENT to the same extent that such liability would be imposed in the absence of Section 895.2 of said Code. To achieve the above stated purpose, each of the parties indemnifies and hold harmless the other party for any liability, cost, or expense that may be imposed upon

such other party solely by virtue of said Section 895.2. The provisions of Section 2778 of the California Civil Code are made a part hereof as if incorporated herein.

IN WITNESS WHEREOF, the parties hereto have caused this Deed to be executed by their respective officers, duly authorized by the COUNTY.

COUNTY OF LOS ANGELES

By: _____
Printed Name: _____
Title: _____

ATTEST:

Violet Varona-Lukens
Executive Officer of the
Board of Supervisors of
The County of Los Angeles

By: _____
Deputy

APPROVED AS TO FORM:

By: _____
Printed Name: _____
Title: _____

ALAMEDA CORRIDOR TRANSPORTATION
AUTHORITY, a Joint Powers Authority

By: _____
John Doherty
Chief Executive Officer

ATTEST:

By: _____
Printed Name: _____
Title: _____

CITY OF LOS ANGELES ACTING BY AND
THROUGH ITS BOARD OF HARBOR
COMMISSIONERS

By: _____
Printed Name: _____
Title: _____

ATTEST:

By: _____
Printed Name: _____
Title: _____

APPROVED AS TO FORM:

By: _____
Printed Name: _____
Title: _____

CITY OF LONG BEACH ACTING BY AND
THROUGH ITS BOARD OF HARBOR
COMMISSIONERS

By: _____
Printed Name: _____
Title: _____

ATTEST:

By: _____
Printed Name: _____
Title: _____

APPROVED AS TO FORM:

By: _____
Printed Name: _____
Title: _____

CERTIFICATE OF ACCEPTANCE

This is to certify that the interests in real property conveyed by the within Deed and Assignment to the County of Los Angeles, are hereby accepted by the undersigned officer on behalf of the County, pursuant to authority conferred by resolutions of said Board of Supervisors adopted on _____, _____ as Resolution No. _____, and the County of Los Angeles consents to recordation thereof by its duly authorized officer.

COUNTY OF LOS ANGELES

By: _____
Printed Name: _____
Title: _____

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____, _____ personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

(AFFIX NOTARIAL SEAL)

NOTARY PUBLIC

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____, _____ personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

(AFFIX NOTARIAL SEAL)

NOTARY PUBLIC

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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NOTARY PUBLIC